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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFRED DAVIS,

Defendant and Appellant.

E063201

(Super.Ct.No. FVI024060)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stephan G. Saleson and Eric M. Nakata, Judges. Affirmed.

Cynthia M. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, in January 2007, defendant and appellant Alfred Davis pled nolo contendere to assault with force likely to cause great bodily injury

(Pen. Code, § 245, subd. (a)(1)).¹ In return, the remaining allegations were dismissed and defendant was placed on formal probation for a period of 36 months on various terms and conditions, including serving 365 days in county jail.

In November 2014, defendant filed a petition for dismissal and reduction of his assault conviction to a misdemeanor pursuant to sections 17 and 1203.4. Following a hearing, the trial court denied the petition. Defendant appeals from the denial of that petition. We find no error and affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND²

On January 18, 2006, defendant struck his girlfriend in the face with a closed fist at least three times. He then took her away from her residence in his vehicle against her will, threatened her with further violence and attempted to choke her. Defendant was under the influence of alcohol at the time. Also, at the time of the offense, the victim had a restraining order against the defendant.

On May 1, 2006, an information was filed charging defendant with kidnapping (§ 207, subd. (a); count 1); assault with force likely to cause great bodily injury (§ 245, subd. (a)(1); count 2); corporal injury to a spouse/cohabitant or child's parent (§ 273.5, subd. (a); count 3); dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1);

¹ All future statutory references are to the Penal Code unless otherwise stated.

² The factual background is taken from the probation officer's reports.

count 4); making criminal threats (§ 422; count 5); and false imprisonment (§ 236; count 6).

On January 19, 2007, defendant pled nolo contendere to count 2. In exchange, the remaining charges would be dismissed and defendant would be placed on probation.

On March 1, 2007, defendant was sentenced in accordance with his negotiated plea. He was placed on formal probation for a period of 36 months on various terms and conditions, including serving 365 days in county jail.

On November 7, 2014, defendant filed a petition for dismissal and/or reduction of his aggravated assault conviction to a misdemeanor pursuant to sections 17, subdivision (b), and 1203.4.³

In response, the probation department prepared two memoranda—one filed on December 5, 2014, and the other on January 27, 2015. In the December 5, 2014 memorandum, the probation department reported: “Although the defendant apparently completed the period of probation without sustaining any violations, he failed to pay the fees and fines as ordered by the court. According to Central Collections Records (CUBS), the defendant has an outstanding balance of \$1620.00 in the current matter.”

³ Section 1203.4, subdivision (a), provides, in pertinent part, that “[i]n any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, . . . be permitted by the court to withdraw his . . . plea of guilty . . . and enter a plea of not guilty[,] . . . and, . . . the court shall thereupon dismiss the accusations or information against the defendant”

The December 5, 2014 memorandum also listed eight arrests defendant had sustained; three of which occurred during the pendency of his probation—twice for battery on a peace officer and once for driving on a suspended license. He had also been arrested in June 2010 for battery on a spouse/cohabitant, and in August 2011, June 2012, August 2013, and July 2014 for driving under the influence (DUI). In addition, defendant had sustained four misdemeanor convictions (two of which occurred during the pendency of his probation) for driving on a suspended license, two unrelated failures to appear in the Santa Monica and Compton Superior Courts, and another DUI.

The probation department prepared the January 27, 2015 memorandum in response to the trial court's query of why defendant's arrests and convictions had not been presented to the court during defendant's probation. In that memorandum, the probation officer reported that defendant had failed to report any law enforcement contacts to his probation officer and that defendant had not been properly supervised due to the difficulties coordinating between the local probation officer and the Los Angeles County Probation Department, where defendant claimed to have been living at the time. The probation officer also reported that periodic record checks were not routinely performed by the probation department; that defendant had failed to voluntarily disclose his new law enforcement contacts; and that defendant had clearly violated the terms of his probation grant.

A hearing on defendant's petition was held on January 29, 2015. Following argument and a statement from defendant, the trial court denied defendant's petition,

explaining: “Well, the difficulty that I have with that, [defendant], is that you have not been a good probationer. As a matter of fact, you weren’t supervised because you were jumping back and forth between Los Angeles and our county. You were required, under your probation, to have communication with your probation officer for these events that occurred while you were on probation and you didn’t do that. It’s almost like you were trying to hide the fact that these events occurred. And as the memo of December 5th, 2014 indicates, that you have had a number of contacts with not only Los Angeles Sheriff’s Department, L.A.P.D., and the CHP here in Victorville in which you’re involved with some very serious cases. So I’m not sure that I believe you when you say that you’re trying to do better.”

On March 27, 2015, defendant filed a notice of appeal from the trial court’s denial of his petition.

II

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record. We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

III

DISPOSITION

The trial court's order denying defendant's petition for dismissal and/or reduction of his aggravated assault conviction is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

CODRINGTON

J.